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VINCENT KHOURY TYLOR

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

VINCENT KHOURY TYLOR, Plaintiff, vs. CRUISE.COM, INC., a Delaware Corporation, dba CRUISE.COM; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; and DOE ASSOCIATIONS 1-10, Defendants.	CIVIL NO. 15-00203 (Copyright Infringement) COMPLAINT FOR COPYRIGHT INFRINGEMENTS AND DIGITAL MILLENNIUM COPYRIGHT ACT VIOLATIONS; EXHIBITS “A”-“D”

COMPLAINT FOR COPYRIGHT INFRINGEMENTS AND DIGITAL MILLENNIUM COPYRIGHT ACT VIOLATIONS

COMES NOW Plaintiff VINCENT KHOURY TYLOR, by his attorneys, J. Stephen Street, Attorney at Law, and Dane Anderson, Attorney at Law, LLLC, and for his complaint alleges as follows:

PARTIES

1. Plaintiff VINCENT KHOURY TYLOR ("Plaintiff") is a resident of the State of Hawaii.

2. Upon information and belief, Defendant CRUISE.COM, INC. ("CRUISE.COM") is a for profit corporation, incorporated in Delaware, with its principal place of business in Dania Beach, Florida, and is doing business as CRUISE.COM.

3. JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, and DOE ASSOCIATIONS 1-10 are named herein under fictitious names for the reason that, after investigation of the facts of this action, said Defendants' true names and identities are presently unknown to Plaintiff except, upon information and belief, that they are connected in some manner with the named Defendant and/or were the agents, servants, employees, employers, representatives, co-venturers, associates, successors or assignees of the named Defendant who may be under a duty, contractually or otherwise, to pay Plaintiff compensation for loss incurred by the

actions or omissions of the named Defendant and/or were in some manner related to the named Defendant and that their "true names, identities, capacity, activities and/or responsibilities" are presently unknown to Plaintiff or his attorneys. To ascertain the full names and identities of JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, and DOE ASSOCIATIONS 1-10, Plaintiff's counsel have investigated the facts alleged herein through, *inter alia*, interview of Plaintiff and inspection of the records in this matter. When the true names and capacities are ascertained, through appropriate discovery, Plaintiff shall move to amend this action to state the true names.

JURISDICTION AND VENUE

4. This is an action for preliminary and permanent injunctive relief and damages arising from CRUISE.COM's copyright infringements in violation of the United States Copyright Act, 17 U.S.C. §§ 101 *et seq*. and violations of the Digital Millennium Copyright Act, 17 U.S.C. § 1202.

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 and § 1338(a).

6. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400.

FACTUAL ALLEGATIONS

7. CRUISE.COM manages and controls a commercial website, at http://www.cruise.com/, where customers can view information on CRUISE.COM's business as an online travel agency, advertised as "One of the Internet's Largest Cruise Specialists," and its products and services offered, and complete purchases of those products and services. Customers can also click on icon-buttons to be automatically routed to CRUISE.COM's commercial web pages on social media websites Facebook.com, Pinterest.com, and Google.com.

8. CRUISE.COM manages and controls a commercial web blog, at http://blog.cruise.com/, as part of its commercial website described in paragraph 7, to advertise and promote CRUISE.COM's products and services offered.

9. CRUISE.COM manages and controls a commercial web page on Facebook.com, at https://www.facebook.com/cruisediscounts, to advertise and promote its online travel agency and its products and services offered, and to encourage users of its Facebook.com commercial web page to navigate to its commercial website described in paragraph 7, or click on a provided hyperlink to be to be directly routed to its commercial website, to purchase its products and services.

10. CRUISE.COM manages and controls a commercial web page on Pinterest.com, at https://www.pinterest.com/cruisecom/, to advertise and

promote its online travel agency and its products and services offered, and to encourage users of its Pinterest.com commercial web page to navigate to its commercial website described in paragraph 7, or click on a provided hyperlink to be to be directly routed to its commercial website, to purchase its products and services.

11. CRUISE.COM manages and controls a commercial web page on Plus.Google.com ("Google+"), at https://plus.google.com/+cruisecom/, to advertise and promote its online travel agency and its products and services offered, and to encourage users of its Google+ commercial web page to navigate to its commercial website described in paragraph 7, or click on a provided hyperlink to be to be directly routed to its commercial website, to purchase its products and services.

12. Upon information and belief, CRUISE.COM knowingly, systematically, and continuously transacts business and enters into contracts on an ongoing basis with and/or provides products or services to individuals or businesses in Hawaii and/or to individuals or businesses intending to travel to or conduct business in Hawaii. CRUISE.COM transacts business or enters into contracts or business relationships with Hawaii businesses, including cruise line businesses registered and doing business in Hawaii. CRUISE.COM engaged in intentional acts that willfully infringed Plaintiff's copyrights, knowing that those

acts would adversely impact Plaintiff in the State of Hawaii, and knew or should have known about the existence of Plaintiff's copyrights and the forum.

13. Each photographic work at issue in this case is an original work entitled to copyright protection pursuant to the copyright laws of the United States, and each photographic work at issue is duly registered with the United States Copyright Office.

14. The seven (7) photographic works, image nos.: "B-18 Green Beach"; "K-06-B Wailua Falls Rainbow"; "M-25 Kaanapali Beach"; "O-05 Chinamans Hat"; "O-06 Hanauma Bay Wide"; "O-23 Waikiki Dusk"; and "O-01 Waikiki-Pink boat ORIGINAL VERSION", at issue in this case were created by Plaintiff, a professional photographer, who owns the copyrights to those works. The copyrights for those photographic works were registered with the United States Copyright Office as: 1) VA 1-696-555, effective December 17, 2009, and supplemented by form VA 1-432-741, effective June 20, 2011; and 2) VA 1-759-562, effective January 29, 2011, in the name of Plaintiff, who has exclusive rights and privileges in those photographic works under the United States Copyright Act. True and correct copies of the Certificates of Registration that relate to those photographic works are attached hereto as Exhibit "A."

15. None of the said photographic works was a "work for hire."

16. Plaintiff incurred substantial time and expense in creating the photographic works at issue, and Plaintiff licenses those photographic works for commercial and other uses.

17. Plaintiff learned that CRUISE.COM was using three (3) of his photographic works at issue, in high resolution, on its commercial website a total of at least three (3) different times, as follows:

Image **"O-05 Chinamans Hat"** was used at least one (1) time as a banner at:

Page URL:
http://www.cruise.com/cruise-destinations/hawaii-cruise/index.aspx?skin=001&pin=&phone=888-333-3116
Image URL:
http://www.cruise.com/cruise-destinations/hawaii-cruise/images/hawaii-cruises.jpg

Image **"O-23 Waikiki Dusk"** was used at least one (1) time at:

Page URL:
http://www.cruise.com/cruise-destinations/hawaii-cruise/index.aspx?skin=001&pin=&phone=888-333-3116
Image URL:
http://www.cruise.com/featured/destinations/images/hawaii-05.jpg

Image **"M-25 Kaanapali Beach"** was used at least one (1) time at:

Page URL:
http://www.cruise.com/cruise-destinations/hawaii-cruise/index.aspx?skin=001&pin=&phone=888-333-3116
Image URL:
http://www.cruise.com/featured/destinations/images/hawaii-02.jpg

CRUISE.COM used these photographic works without obtaining licenses or consent from Plaintiff, thus violating his exclusive rights as the copyright owner to reproduce, adapt, display, distribute, and/or create derivative works under 17 U.S.C. §§ 101 *et seq*. A true and correct copy of each of those photographic works registered by Plaintiff along with a copy of a screenshot of CRUISE.COM's infringing uses are attached hereto as Exhibit "B."

18. On November 27, 2012, Plaintiff gave notice to CRUISE.COM of the copyright infringements described in paragraph 17, and attempted to resolve the claims by requesting that CRUISE.COM pay monetary damages for those infringements. By letter of December 3, 2012, CRUISE.COM's counsel responded to Plaintiff's notice and stated that the photographs had been removed from CRUISE.COM's website. CRUISE.COM and Plaintiff, however, did not otherwise settle the claims.

19. Despite the notice of copyright infringement received by CRUISE.COM in December of 2012, and taking down the infringement in 2012, CRUISE.COM has reused Plaintiff's **"M-25 Kaanapali Beach"** in high resolution at least eight (8) separate, additional times on CRUISE.COM's commercial website, commercial web blog (within a rotating slideshow), and Facebook.com commercial web page (posted to Facebook.com on May 12, 2014), as follows:

Page URLs:
http://www.cruise.com/espanol/destinos/hawaii/index.aspx
http://www.cruise.com/espanol/destinos/hawaii/index.aspx?skin=497&pin=de_PCanalCAmerica&phone=888-271-8458
http://www.cruise.com/espanol/destinos/hawaii/index.aspx?skin=497&pin=&phone=888-271-8388

http://blog.cruise.com/page/10/
http://blog.cruise.com/2011/11/21/hawaii-cruise-vacations-destinations-dining-shopping-and-excursions/

https://www.facebook.com/cruisediscounts/photos_stream
https://www.facebook.com/cruisediscounts/photos_stream?fref=photo
https://www.facebook.com/photo.php?fbid=10154159015645714&set=pb.188140595713.-2207520000.1400215956.&type=3&theater
https://www.facebook.com/cruisediscounts/photos/pcb.10154159021905714/10154159015645714/?type=1&theater

Image URLs:
http://www.cruise.com/espanol/destinos/hawaii/imagenes/kaanapali-playa-hawaii.jpg
https://cruisecom.files.wordpress.com/2011/11/kaanapali_beach_hawaii-normal.jpg
http://www.cruise.com/espanol/destinos/multimedia/south-pacific-gallery.swf
https://scontent-b-lax.xx.fbcdn.net/hphotos-prn2/t31.0-8/10344251_10154159015645714_4884502530860616 21_o.jpg

CRUISE.COM is still using this photographic work without obtaining a license or consent from Plaintiff and with notice of his copyright, thus constituting willful copyright infringement. Copies of CRUISE.COM's additional, ongoing infringing uses of **"M-25 Kaanapali Beach"** are attached hereto as Exhibit "C."

20. Plaintiff further learned that CRUISE.COM is currently using four (4) other photographic works belonging to Plaintiff, in high resolution, on its commercial website, commercial web blog (within a rotating slideshow), Facebook.com commercial web page, and Google+ commercial web page, and previously on its Pinterest.com commercial web page, a total of at least sixteen (16) different times, as follows:

Image **"O-06 Hanauma Bay Wide"** is being used at least five (5) times in high resolution at:

Page URLs:
http://www.cruise.com/espanol/destinos/hawaii/index.aspx
http://www.cruise.com/espanol/destinos/hawaii/index.aspx?skin=497&pin=de_PCanalCAmerica&phone=888-271-8458
http://www.cruise.com/espanol/destinos/hawaii/index.aspx?skin=497&pin=&phone=888-271-8388

http://blog.cruise.com/page/10/
http://blog.cruise.com/2011/11/21/hawaii-cruise-vacations-destinations-dining-shopping-and-excursions/

Image URLs:
http://www.cruise.com/espanol/destinos/hawaii/imagenes/playa-hawaii.jpg
https://cruisecom.files.wordpress.com/2011/11/hawaii2.jpg
http://www.cruise.com/espanol/destinos/multimedia/south-pacific-gallery.swf

Image **"B-18 Green Beach"** is being used at least two (2) times in high resolution at:

Page URLs:
http://blog.cruise.com/page/10/
http://blog.cruise.com/2011/11/21/hawaii-cruise-vacations-destinations-dining-shopping-and-excursions/

Image URLs:
https://cruisecom.files.wordpress.com/2011/11/greenbeach-bigislandhawaii.jpg
http://www.cruise.com/espanol/destinos/multimedia/south-pacific-gallery.swf

Image **"K-06-B Wailua Falls Rainbow"** is being used at least two (2) times in high resolution at:

Page URLs:
http://blog.cruise.com/page/10/

http://blog.cruise.com/2011/11/21/hawaii-cruise-vacations-destinations-dining-shopping-and-excursions/

Image URLs:
https://cruisecom.files.wordpress.com/2011/11/wailua-fallskauaihawaii.jpg
http://www.cruise.com/espanol/destinos/multimedia/south-pacific-gallery.swf

Image **"O-01 Waikiki-Pink boat ORIGINAL VERSION"** is being used at least five (5) times on Facebook.com and Google+, and was being used two (2) times on Pinterest.com, in high resolution at:

Page URLs:
https://www.facebook.com/cruisediscounts/photos_stream
https://www.facebook.com/cruisediscounts/photos_stream?fref=photo
https://www.facebook.com/cruisediscounts/photos/pcb.10155146678705714/10155146608665714/?type=1&theater

https://plus.google.com/+cruisecom/photos
https://plus.google.com/+cruisecom/photos/photo/6138825131762646194?pid=6138825131762646194&oid=116160541633597222137
https://plus.google.com/+cruisecom/posts/gzG96zQ1kb1?pid=6138825131762646194&oid=116160541633597222137

http://www.pinterest.com/cruisecom/pins/
http://www.pinterest.com/pin/30258628719489763/

Image URLs:
https://scontent-lax.xx.fbcdn.net/hphotos-xap1/v/t1.0-9/p480x480/1554343_10155146608665714_6590303798420757 9_n.jpg?oh=5e12336afa606777c5b93d0b6bb54957&oe=559FDDB3
https://lh4.googleusercontent.com/-c1MtfkWsTlQ/VTF87rTz_LI/AAAAAAAAKdo/_tHEDMggIOo/w1166-h778-no/hawaii-vacation.jpg

CRUISE.COM is using these photographic works without obtaining licenses or consent from Plaintiff, thus violating his exclusive rights as the copyright owner to reproduce, adapt, display, distribute, and/or create derivative works under 17 U.S.C. §§ 101 *et seq*. A true and correct copy of each of these photographic works registered by Plaintiff along with copies of CRUISE.COM's infringing uses are attached hereto as Exhibit "D."

21. Plaintiff's copyrighted photographic works, where they are legitimately available, bear his copyright management information in the form of a "Vincent K. Tylor" signature at the bottom corner of each photographic work.

22. Upon information and belief, CRUISE.COM intentionally removed or altered Plaintiff's copyright management information from his photographic works for CRUISE.COM's commercial uses of those photographic works, as described herein, without his authority or the authority of the law, and/or CRUISE.COM distributed those photographic works knowing that Plaintiff's copyright management information had been removed or altered without his authority or the authority of the law. CRUISE.COM displayed copies of those photographic works without Plaintiff's copyright management information, knowing that CRUISE.COM did not own the photographic works, and knowing that a simple internet image search would locate those photographic works with his copyright management information clearly associated with those photographic works. True and correct copies of Plaintiff's photographic works at issue containing his copyright management information along with copies of screenshots

of CRUISE.COM's infringing uses with the copyright management information cropped are shown in Exhibits "B" through "D."

23. CRUISE.COM's use of two (2) of Plaintiff's photographic works on its Facebook.com commercial web page have contributed to widespread distribution of those photographic works, absent any copyright management information attributable to Plaintiff, because users who viewed CRUISE.COM's Facebook.com commercial web page could easily distribute its postings of those photographic works without Plaintiff's copyright information among other Facebook.com users or promote CRUISE.COM by clicking on the "Like" button or "Share" button associated with those photographic works as they appeared on CRUISE.COM's Facebook.com commercial web page. Each "Like" or "Share" action by a user caused those photographic works to be distributed to other users or promoted CRUISE.COM's Facebook.com commercial web page or its business as the origin and owner of those photographic works. Furthermore, CRUISE.COM's Facebook.com commercial web page and the posts within that page are automatically promoted to other users who clicked the "Like" button associated with that page, effectively advertising CRUISE.COM's business as well as the posted photographic works at issue, absent Plaintiff's copyright information. CRUISE.COM's Facebook.com commercial web page has received more than 321,000 "Likes".

24. CRUISE.COM's use of one (1) of Plaintiff's photographic works at issue on its Pinterest.com commercial web page has contributed to widespread distribution of that infringing use. CRUISE.COM's Pinterest.com commercial web page has over 280 "followers" (users who clicked "Follow" on that Pinterest.com commercial web page). Copies of CRUISE.COM's use at issue, when posted, were automatically distributed to its followers for viewing and further distribution by those followers. Furthermore, any user could easily distribute that infringement among other users by clicking on the "Pin it" button or "Like" button associated with that use as it appeared on CRUISE.COM's Pinterest.com commercial web page, or users could distribute that infringement among the millions of users of social media website Facebook.com by clicking on the "share" button associated with that use. Each "Pin it" or "Like" or "share" click by a user caused uses of that infringement to be distributed to other users or promoted CRUISE.COM's Pinterest.com commercial web page or its business as the origin of that photographic work.

25. One (1) of Plaintiff's photographic works at issue posted by CRUISE.COM on its Google+ commercial web page has contributed to widespread distribution of this photographic work because it was "shared publicly," allowing other users to distribute copies of this infringing use to other users by clicking on button to "share" CRUISE.COM's infringing use. Each

"share" click by a user also promotes CRUISE.COM's Google+ commercial web page or its business as the origin of that photographic work. CRUISE.COM's Google+ commercial web page has received over 900,000 views and has over 3,600 followers.

26. Plaintiff and CRUISE.COM were unable to resolve this matter, thus necessitating legal action.

FIRST CAUSE OF ACTION:
COPYRIGHT INFRINGEMENT

27. Plaintiff restates and realleges each of the allegations contained in paragraphs 1-26 as if fully stated herein.

28. Plaintiff has all rights, title, and interest in the copyrights to the photographic works at issue as holder and owner of the copyrights, the use of which has not been licensed to CRUISE.COM.

29. CRUISE.COM has misappropriated Plaintiff's copyrighted photographic works at issue with knowledge that the photographic works did not belong to CRUISE.COM; CRUISE.COM thereby engaged in, and continues to willfully engage in, unauthorized use, copying, distribution, and/or display of Plaintiff's copyrighted photographic works by using a total of seven (7) of Plaintiff's photographic works a total of at least twenty-seven (27) separate times on CRUISE.COM's commercial website, commercial web blog, and commercial web pages on Facebook.com, Pinterest.com, and Google +, without obtaining

licenses or consent from Plaintiff and by reusing one (1) of Plaintiff's photographic works in disregard of Plaintiff's notice of copyright. CRUISE.COM's acts constitute willful copyright infringement under the United States Copyright Act, 17 U.S.C. §§ 101 *et seq*.

30. CRUISE.COM has shown that it intends to continue, unless restrained, to use Plaintiff's copyrighted photographic works, willfully infringing, and causing irreparable damage to Plaintiff for which he has no adequate remedy of law.

31. Plaintiff is entitled to a preliminary and permanent injunction restraining CRUISE.COM from engaging in further acts of copyright infringement and causing irreparable damage to Plaintiff for which he has no adequate remedy of law.

32. CRUISE.COM's unlawful use of copies of Plaintiff's photographic works have diminished the value of the original photographic works by distributing and encouraging redistribution of those copies without identifying the photographic works as being the exclusive property of Plaintiff.

33. CRUISE.COM's unlawful acts have been and are interfering with and undermining Plaintiff's ability to market Plaintiff's own original photographic works, thereby impairing the value and prejudicing the sale or license by Plaintiff of his own photographic works.

34. Because CRUISE.COM used Plaintiff's copyrighted photographic works without license or consent, infringing the exclusive rights of Plaintiff as the copyright owner, Plaintiff is entitled to have the infringing publications and any improperly acquired likenesses or images (however stored or recorded) impounded while this action is pending.

35. As a direct and proximate result of CRUISE.COM's wrongful acts, Plaintiff has suffered and continues to suffer lost profits and damages.

36. Plaintiff is entitled to recover from CRUISE.COM the damages he has sustained as a result of these wrongful acts. Plaintiff is presently unable to ascertain the full extent of the monetary damages he has suffered by reason of CRUISE.COM's acts of copyright infringement.

37. Plaintiff is further entitled to recover from CRUISE.COM any gains, profits, or advantages CRUISE.COM obtained as a result of its wrongful acts. Plaintiff is presently unable to ascertain the full extent of the gains, profits, and advantages CRUISE.COM has realized by its acts of copyright infringement.

38. Plaintiff is entitled to elect to recover from CRUISE.COM statutory damages for each of its violations of Plaintiff's copyrights.

39. Plaintiff is further entitled to costs and reasonable attorneys' fees.

SECOND CAUSE OF ACTION: DIGITAL MILLENNIUM COPYRIGHT ACT VIOLATIONS

40. Plaintiff restates and realleges each of the allegations contained in paragraphs 1-39 as if fully stated herein.

41. CRUISE.COM intentionally removed or altered copyright management information from association with Plaintiff's seven (7) photographic works at issue for its said uses, or distributed those photographic works at issue knowing that Plaintiff's copyright management information had been removed or altered, without the authority of Plaintiff or the law, knowing, or having reasonable grounds to know, that the removal or alteration, or distribution, would induce, enable, facilitate, or conceal infringement of copyright.

42. CRUISE.COM's acts constitute violations under the Digital Millennium Copyright Act, 17 U.S.C. § 1202.

43. Plaintiff is entitled to a preliminary and permanent injunction to prevent CRUISE.COM from engaging in further violations of 17 U.S.C. § 1202.

44. Plaintiff is entitled to recover from CRUISE.COM the actual damages suffered by him and any profits CRUISE.COM has obtained as a result of its wrongful acts that are not taken into account in computing the actual damages. Plaintiff is currently unable to ascertain the full extent of the profits CRUISE.COM has realized by its violations of 17 U.S.C. § 1202.

45. Plaintiff is entitled to elect to recover from CRUISE.COM statutory damages for each of its violations of 17 U.S.C. § 1202.

46. Plaintiff is further entitled to costs and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff VINCENT KHOURY TYLOR prays:

A. That this Court enter an injunction preliminarily and permanently enjoining and restraining CRUISE.COM and its directors, officers, agents, servants, employees, attorneys, and all persons in active concert or participation with CRUISE.COM from infringing Plaintiff's copyrighted photographic works and from further violating 17 U.S.C. § 1202;

B. That the Court order any original infringing photographs, prints, separations, publications, copies, products, or materials bearing the images, digital data in any form and/or likenesses impounded and/or destroyed or disposed of in other reasonable fashion;

C. That CRUISE.COM be required to pay such damages as Plaintiff has sustained and any profits CRUISE.COM has gained in consequence of CRUISE.COM's unlawful acts or, in the alternative, to pay statutory damages pursuant to 17 U.S.C. § 504(c) and 17 U.S.C. § 1203(c);

D. That CRUISE.COM be required to pay costs, including reasonable attorneys' fees, to Plaintiff pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1203(b); and,

E. That Plaintiff be granted such other and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawaii, May 29, 2015.

/s/ J. Stephen Street

J. STEPHEN STREET
DANE ANDERSON
Attorneys for Plaintiff
VINCENT KHOURY TYLOR